

Federal Reserve System

§ 208.75

member bank shall be deemed a subsidiary of a bank holding company and not a subsidiary of the bank for purposes of the anti-tying prohibitions of section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971 et seq.).

§ 208.74 What happens if the state member bank fails to continue to meet certain requirements?

(a) *Qualifications and safeguards.* The following procedures apply to a state member bank that controls or holds an interest in a financial subsidiary.

(1) *Notice by Board.* If the Board finds that a state member bank or any of its depository institution affiliates fails to continue to be well capitalized and well managed or comply with the asset limitation set forth in § 208.71(a)(2) or the safeguards set forth in § 208.73(b), the Board will notify the state member bank in writing and identify the areas of noncompliance.

(2) *Notification by state member bank.* A state member bank must promptly notify the Board if the bank becomes aware that any depository institution affiliate of the bank has ceased to be well capitalized and well managed.

(3) *Execution of agreement.* Within 45 days after receiving a notice under paragraph (a)(1) of this section, or such additional period of time as the Board may permit, the:

(i) State member bank must execute an agreement acceptable to the Board to comply with all applicable capital, management, asset and safeguard requirements; and

(ii) Any relevant depository institution affiliate of the state member bank must execute an agreement acceptable to its appropriate Federal banking agency to comply with all applicable capital and management requirements.

(4) *Imposition of limits.* Until the Board determines that the conditions described in the notice under paragraph (a)(1) of this section are corrected:

(i) The Board may impose any limitations on the conduct or activities of the state member bank or any subsidiary of the bank as the Board determines to be appropriate under the circumstances and consistent with the purposes of section 121 of the Gramm-

Leach-Bliley Act (12 U.S.C. 24a, 335, 371c, and 1971), including requiring the Board's prior approval for any financial subsidiary of the bank to acquire any company or engage in any additional activity; and

(ii) The appropriate Federal banking agency for any relevant depository institution affiliate may impose any limitations on the conduct or activities of the depository institution or any subsidiary of that institution as the agency determines to be appropriate under the circumstances and consistent with the purposes of section 121 of the Gramm-Leach-Bliley Act (12 U.S.C. 24a, 335, 371c, and 1971).

(5) *Divestiture.* The Board may require a state member bank to divest control of any financial subsidiary if the conditions described in a notice under paragraph (a)(1) of this section are not corrected within 180 days of receipt of the notice or such additional period of time as the Board may permit. Any divestiture must be completed in accordance with any terms and conditions established by the Board.

(6) *Consultation.* The Board will consult with all relevant Federal and state regulatory authorities in taking any action under this subsection.

(b) *Debt rating or alternative requirement.* If a state member bank does not continue to meet any applicable debt rating or alternative requirement of § 208.71(b), the bank may not, directly or through a subsidiary, purchase or acquire any additional equity capital of any financial subsidiary until the bank restores its compliance with the requirements of that section. For purposes of this paragraph, the term "equity capital" includes, in addition to any equity investment, any debt instrument issued by the financial subsidiary if the instrument qualifies as capital of the subsidiary under federal or state law, regulation or interpretation applicable to the subsidiary.

§ 208.75 What happens if the state member bank or any of its insured depository institution affiliates has received less than a "satisfactory" CRA rating?

(a) *Limits on establishment of financial subsidiaries and expansion of existing financial subsidiaries.* If a state member bank, or any of its insured depository

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institution affiliates, has received less than a “satisfactory” rating in meeting community credit needs in its most recent examination under the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*):

(1) The state member bank may not, directly or indirectly, acquire control of any financial subsidiary; and

(2) Any financial subsidiary controlled by the state member bank may not commence any additional activity or acquire control, including all or substantially all of the assets, of any company.

(b) *Exception for certain activities.* The prohibition in paragraph (a)(2) of this section does not apply to any activity, or to the acquisition of control of any company that is engaged only in activities, that the state member bank is permitted to conduct directly and that are conducted on the same terms and conditions that govern the conduct of the activity by the state member bank.

(c) *Duration of prohibitions.* The prohibitions described in paragraph (a) of this section shall continue in effect until such time as the state member bank and each insured depository institution affiliate of the state member bank has achieved at least a “satisfactory” rating in meeting community credit needs in its most recent examination under the Community Reinvestment Act.

§ 208.76 What Federal Reserve approvals are necessary for financial subsidiaries?

(a) *Notice requirements.* (1) A state member bank may not acquire control of, or an interest in, a financial subsidiary unless it files a notice (in letter form, with enclosures) with the appropriate Reserve Bank.

(2) A state member bank may not engage in any additional activity pursuant to § 208.72(a)(1) or (2) through an existing financial subsidiary unless the state member bank files a notice (in letter form, with enclosures) with the appropriate Reserve Bank.

(b) *Contents of notice.* Any notice required by paragraph (a) of this section must:

(1) In the case of a notice filed under paragraph (a)(1) of this section, describe the transaction(s) through which

the bank proposes to acquire control of or an interest in the financial subsidiary;

(2) Provide the name and head office address of the subsidiary;

(3) Provide a description of the current and proposed activities of the financial subsidiary and the specific authority permitting each activity;

(4) Certify that the bank and each of its depository institution affiliates, was well capitalized at the close of the previous calendar quarter, and remains well capitalized as of the date the bank files its notice;

(5) Certify that the bank and each of its depository institution affiliates is well managed as of the date the bank files its notice;

(6) Certify that the bank meets the debt rating or alternative requirement of § 208.71(b), if applicable; and

(7) Certify that the bank and its financial subsidiaries are in compliance with the asset limit set forth in § 208.71(a)(3) both before the proposal and on a pro forma basis.

(c) *Insurance activities.* (1) If a notice filed under paragraph (a) of this section relates to the initial affiliation of the bank with a company engaged in insurance activities, the notice must describe the type of insurance activity that the company is engaged in or plans to conduct and identify each state where the company holds an insurance license and the state insurance regulatory authority that issued the license.

(2) The appropriate Reserve Bank will send a copy of any notice described in this subsection to the appropriate state insurance regulatory authorities and provide such authorities with an opportunity to comment on the proposal.

(d) *Approval procedures.* A notice filed with the appropriate Reserve Bank will be deemed approved on the fifteenth day after receipt of a complete notice by the appropriate Reserve Bank, unless prior to that date the Board or the appropriate Reserve Bank notifies the bank that the notice is approved, that the notice will require additional review, or that the bank does not meet the requirements of this subpart.